

# ANALYSIS OF ORIGINAL BILL

## Franchise Tax Board

Author: Leach Analyst: Kimberly Pantoja Bill Number: AB 149

Related Bills: See Legislative Telephone: 845-4786 Introduced Date: 01/15/99

History Attorney: Doug Bramhall Sponsor: \_\_\_\_\_

**SUBJECT:** Child Care Credit/"The Family Choice Child Care Act of 1999"

### SUMMARY

Under the Personal Income Tax Law (PITL), this bill would allow a credit equal to the greater of 30% of the federal credit allowed for certain household and dependent care services necessary for gainful employment or \$150 per qualifying individual for child care expenses incurred.

### EFFECTIVE DATE

This bill is a tax levy and would apply to taxable years beginning on or after January 1, 1999, and does not contain a sunset date.

### LEGISLATIVE HISTORY

AB 2026 (97/98); AB 90, AB 183 (95/96); AB 26, AB 66, SB 39 (93/94)

### SPECIFIC FINDINGS

**Existing federal law (IRC Section 21)** allows a credit against tax of 20%-30% (depending on the taxpayer's adjusted gross income) of employment-related costs of care for a qualifying individual. A qualifying individual is defined as a dependent of the taxpayer who is under the age of 13 or a dependent or spouse who is physically or mentally unable to care for him- or herself. Employment-related expenses are defined, generally, as those expenses incurred to enable gainful employment.

**Existing federal law** limits the amount of employment-related expenses incurred during a taxable year to \$2,400, if there is one qualifying individual, or \$4,800, if there are two or more qualifying individuals with respect to the taxpayer for that taxable year.

California had a similar credit based upon expenses for household and dependent care services necessary for gainful employment. That credit was a percentage of the federal credit; the percentage was based upon the taxpayer's AGI and ranged between 15% and 30%. That credit provision was repealed by its own terms December 1, 1993.

**Existing state law** allows employers under both the Bank and Corporation Tax Law and the PITL to claim a tax credit for establishing a child care program, constructing a child care facility, or contributing to child care information and referral services. Building owners may claim this credit based on a program or facility established for their tenants' children.

### Board Position:

_____ S	_____ NA	_____ NP
_____ SA	_____ O	_____ NAR
_____ N	_____ OUA	_____ X PENDING

### Department Director

### Date

**Gerald Goldberg**

**3/11/1999**

**This bill** would allow a credit equal to the greater of 30% of the taxpayer's federal household and dependent care credit or \$150 per qualifying individual for child care expenses incurred for each qualifying individual, as defined by the federal credit.

**This bill** would allow a carryover of any portion of this credit that exceeds net tax until the credit is exhausted. Since this bill does not specify otherwise, the general rules in state law that apply to the division of credits among two or more taxpayers would apply. This credit would not reduce regular tax below tentative minimum tax for purposes of alternative minimum tax.

#### Policy Consideration

This credit does not contain a sunset date. Credits generally contain a sunset date to allow periodic review by the Legislature.

#### Implementation Considerations

This bill does not define child care expenses nor does the federal law. The term used in IRC Section 21 is "employment-related expenses." Amending the bill to use this term would enable the department to use federal law interpretations to determine whether expenses qualify for this credit.

Once this definitional problem is resolved, this credit could be implemented during the normal annual forms update cycle.

This bill would allow the credit to be carried over indefinitely. Recently enacted credits have contained a limited carryover since credits typically are exhausted within eight years.

#### Technical Consideration

If the taxpayer incurs less than \$150 in child care expenses, the bill could be interpreted as allowing the full \$150 credit. Amendment 1 would clarify that taxpayers with less than \$150 in child care expenses would only be allowed a credit equal to their actual care costs.

### FISCAL IMPACT

#### Departmental Costs

Once the implementation concerns are resolved, this bill would not significantly impact the department's costs.

#### Tax Revenue Estimate

Revenue losses are estimated to be:

Effective on or after January 1, 1999 Assumed Enactment After June 30, 1999 (millions)		
1999-0	2000-1	2001-2
(\$146)	(\$139)	(\$146)

The estimate for the first fiscal year above includes all of the 1999 tax year impact plus 10% of the 2000 tax year impact.

This analysis does not consider the possible changes in employment, personal income, or gross state product that could result from this measure.

#### Tax Revenue Discussion

Revenue losses under the Personal Income Tax Law would depend on the number of qualifying dependents and the amount of tax liability that would be available to apply the credit.

The above estimates are based on the department's personal income tax model projections. Special programming was done to reflect the federal law credit (as defined by Section 21 of the Internal Revenue Code).

The following table shows the distribution of the changes by adjusted gross income class:

Distribution of Tax Benefits 1999 Tax Year			
Adjusted Gross Income Class	Number of Returns	Tax Change	Average Applied Credit
	(thousands)	(\$ millions)	
Less than \$30,000	104	(\$6)	(\$59)
30,000 to 40,000	53	(\$6)	(\$116)
40,000 to 50,000	349	(\$91)	(\$259)
50,000 and over	95	(\$29)	(\$309)
Totals	601	(\$132)	(\$221)

This estimate would allow a credit equal to the greater of 30% of the federal credit for certain household and dependent care services necessary for gainful employment or \$150 per qualifying individual.

As shown in the above table, the average credit ranges from \$59 to \$309 for the classes shown. This indicates that many lower income taxpayers will not have sufficient tax liability to fully apply the credits.

#### BOARD POSITION

Pending.

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FRANCHISE TAX BOARD'S  
PROPOSED AMENDMENTS TO AB 149  
As Introduced January 15, 1999

AMENDMENT 1

Beginning on page 2, line 2 through line 5, insert the following:

equal to the greater of 30 percent of the credit amount allowed pursuant to Section 21 of the Internal Revenue Code or up to one hundred fifty dollars (\$150) per qualifying individual for child care expenses paid or incurred for each qualifying